

IN PARLIAMENT

SESSION 2013-4

THE ABLE MARINE ENERGY PARK DEVELOPMENT CONSENT ORDER 2014

**TO THE CHAIRMAN OF COMMITTEES OF THE HOUSE OF LORDS AND
THE CHAIRMAN OF WAYS AND MEANS IN THE HOUSE OF COMMONS**

MEMORIAL

of

ABLE HUMBER PORTS LIMITED

in respect of the petition for amendment of

Associated British Ports

Objecting to the petition being certified as proper to be received.

- 1 A Petition has been deposited in the office of the Clerk of the Parliaments and in the Private Bill Office of the House of Commons in respect of the above-named Order by Winckworth Sherwood.
- 2 The Petition is presented as a petition for amendment.
- 3 The Order grants development consent enabling your Memorialist, Able Humber Ports Limited, to construct and operate a marine energy park on the south bank of the Humber Estuary at North Killingholme, North Lincolnshire including the construction of a new quay of 1,279 metres in length within the River Humber and the construction of facilities on land behind the quay for the handling of traffic and materials for offshore renewable energy infrastructure together with associated development including an ecological compensatory scheme on the north bank of the Humber.
- 4 The facility, stretching over 900 acres, will comprise state-of-the-art quayside facilities purpose-built for the manufacture, assembly and installation of offshore renewable technologies. It represents an investment of approximately £450 million to the region and is expected to create around 4,100 direct jobs on the site itself. The facility will enable the growth of the UK's renewable marine energy sector and, in doing so, will assist the UK in:

- (a) reducing greenhouse gas emissions, and improving the security, availability and affordability of energy through diversification;
- (b) significantly increasing port capacity in accordance with national policies; and
- (c) increasing its manufacturing base and target investment in areas of relative deprivation and, according to the Secretary of State, “*transform the Humberside economy*”.

5 Therefore, the Order is a significant element in assisting the UK in meeting its international climate change obligations as well as driving domestic economic growth.

6 The proposed facility is a nationally significant infrastructure project within the meaning of the Planning Act 2008 (the 2008 Act). Accordingly, the application for the Order was submitted to the Infrastructure Planning Commission (IPC) under the procedures provided for in that Act applicable as at the date of submission. In accordance with those procedures the application was examined by a Panel of three Examiners. The examination procedure included the submission of written representations and the attendance at issue specific hearings, including by the Petitioner.

7 In his decision letters dated 28 August 2013 and 18 December 2013 the Secretary of State concluded (agreeing with the Panel’s conclusions) that:

- (a) the application satisfies all legal and regulatory requirements, including the international obligations of the UK Government;
- (b) he was satisfied, in accordance with Section 104(7) of the 2008 Act, that the benefits of the project in terms of its contribution to the local, regional and national economy, its contribution to sustainable energy and carbon reduction, the creation of employment opportunities in a disadvantaged area, are of major significance, and that those benefits outweigh significantly the residual adverse impacts of the project (including matters which the Petitioner now raises again in its Petition);
- (c) the tests for compulsory acquisition in Sections 122 and 123 of the 2008 Act have been met and that the Order should include the compulsory acquisition powers sought by the Memorialist (including those powers now being queried by the Petitioner); and
- (d) there is a compelling case for authorising the project,

and that the Order granting development consent should therefore be made. Accordingly, the Order was made on 13 January 2014 by the Secretary of State under sections 114, 115 and 120 of the 2008 Act.

8 Where, as in this case, the applicant is not a local authority, statutory undertaker or other body specified in section 129 of the 2008 Act, and:

- (a) “the order authorises the compulsory acquisition of land to which [Section 128] applies” i.e. land which is:
 - (a) the property of a local authority; or
 - (b) has been acquired by statutory undertakers (other than a local authority) for the purposes of their undertaking; and
- (b) a representation in respect of the Order was made by the local authority or statutory undertaker whose land it is; and
- (c) the representation was not withdrawn,

section 128 of the 2008 Act makes the Order subject to special parliamentary procedure, but only “to the extent that” the Order involves compulsory acquisition of the land belonging to the local authority or statutory undertaker whose representation has not been withdrawn. For this purpose “land” includes any right over land (see section 159(2)).

9 In the present case, the Order authorises the compulsory acquisition of:

- (a) a triangular shaped piece of land, with two narrow strips of land abutting it, and an immediately adjacent access route 3, all in the freehold ownership of the Petitioner in its capacity as port operator and forming part of its operational land, being Book of Reference Plots 03020, 03021, 03022 and 03023 respectively (together ‘the Triangle’);
- (b) a strip of land over which the Petitioner has the benefit of a right of way for the purposes of providing access to the Triangle, being Book of Reference Plots 03009, 03014 and 03016 (‘the ROW Land’);
- (c) an area of foreshore and bed of the estuary which lies adjacent to the Triangle being Book of Reference Plot 09001 (‘the Foreshore’) which is currently leased to Associated British Ports in its capacity as the conservancy and navigation authority.

10 The acquisition of all interests (excluding the freehold interest which is owned by the Crown Estate) in plot 09001 is necessary for the construction of the southern end of the 1,279m quay. The acquisition of the conservancy and navigation authority’s lease in that plot has the consent of the Crown Estate pursuant to Section 135 of the 2008 Act.

11 The acquisition of the remaining plots of land is necessary in order to allow for the construction on that land of a surface water drainage pumping station and associated drainage channel and landscaping together with overspill low-level storage.

- 12 Furthermore, if the quay were built on plot 09001, then the remaining plots could not be developed as proposed by the Petitioner as there would be no access from them to the River Humber.
- 13 Section 128 of the 2008 Act accordingly applies to make the Order subject to special parliamentary procedure, but only to the limited extent that the Order laid before Parliament by the Secretary of State on 10 February 2014 is in accordance with the Statutory Orders (Special Procedures) Act 1945.
- 14 Your Memorialist objects that the Petition is not proper to be received because:
- (a) elements of the Petition relate to interests (specifically the Foreshore, the leasehold interest referred to in paragraph 6(c) of the Petition) of Associated British Ports as Humber Conservancy Authority. Whereas the Petition was lodged by Associated British Ports in its capacity as the statutory harbour authority and port operator only (see paragraph 4 of the Petition) – indeed, the Petitioner has made the distinction between the roles of harbour authority and conservancy authority very clear throughout the application process. The Memorialist submits that any aspect of the Petition relating to land acquired and owned by the Humber Conservancy Authority must be ignored for the purpose of this special parliamentary procedure as it is not owned by the Petitioner in the capacity in which it has petitioned and therefore not properly the subject of a petition;
 - (b) the Petitioner seeks to challenge aspects of the Order relating to the interface with the Killingholme Branch railway (see paragraphs 8 and 31 – 37 of the Petition) which are grounds beyond the scope of the limited referral of this Order to special parliamentary procedure. That aspect of the Order also does not relate to land acquired by the Petitioner;
 - (c) the Petitioner seeks to challenge aspects of the Order relating to the acquisition of land which, it alleges, was acquired by them (as a statutory undertaker) “for the purposes of their undertaking”. Section 128(1) of the 2008 Act provides that special parliamentary procedure can only apply in those circumstances. In this case, the Petitioner acquired the land referred to in paragraph 6(a) of the Petition in 1967 but it has remained undeveloped and unused by the undertaking for the 47 years since then. In that light it is difficult to argue that the land was acquired by the Petitioner “for the purpose of its undertaking”, notwithstanding that it has very recently expressed an interest in using the land for the purpose of its undertaking at some point in the future;
 - (d) the Memorialist wishes to emphasise that the statutory requirement for a development consent order to follow the special parliamentary procedure has now been repealed by the Growth and Infrastructure Act 2013, although the timing of the application for this Order was such that it does not benefit from the repeal. Nevertheless, Parliament has seen fit to determine that this procedure, in these particular circumstances, no longer serves any useful purpose; and

- (e) the Petitioner seeks through its Petition to revisit issues that have already been considered by the Examining Authority and the Secretary of State, namely that the acquisition of the land referred to in paragraph 6(a) of the Petition would cause serious detriment to the carrying on of the Petitioner's undertaking, which the Secretary of State confirmed would not be the case in paragraph 42 of his decision letter dated 18 December 2014. Furthermore, the Secretary of State, although noting the Petitioner's recent application for a Harbour Revision Order in respect of the development of the Immingham Western Deepwater Jetty (IWDJ) on the Triangle, concluded that, "*it is not certain that the IWDJ will proceed or that it must occupy the triangle site*".
- 15 If, contrary to your Memorialist's submissions, the Chairmen were minded to certify the Petition as proper to be received, the admissible grounds of objection should be limited to the compulsory acquisition and use of rights in the land referred to in sub-paragraphs 6(a) and (b) of the Petition only.
- 16 The arguments in the Petition are all ones which were all fully expressed by the Petitioner and fully considered during the examination stage of the draft Order and were taken into account by the Secretary of State in his decision-making process under the 2008 Act. In addition, the Order contains protective provisions for the Petitioner's benefit which, as approved by the Secretary of State, succeed in safeguarding the Petitioner and its undertaking without the need for the additional protections proposed by paragraphs 30, 37 and 40 of the Petition.
- 17 The decision to make the Order is the subject of a detailed statement of reasons and it remains open to the Petitioner, if it feels aggrieved by that decision, to challenge its legality in the courts. The application of special parliamentary procedure to this Order should not afford the Petitioner an opportunity to challenge the process to make the Order or the decision in a wider sense.

YOUR MEMORIALIST therefore requests that it may be heard by its Agents

and witnesses in support of the allegations contained in this Memorial.

BIRCHAM DYSON BELL LLP
Parliamentary Agents for
ABLE HUMBER PORTS LIMITED

7 March 2014

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